IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/07/2003

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.1239 of 2002 and C.A.No. 1733 of 2002

Senthil Murugan .. Appellant in
CA 1239/02

Sekar @ Ration Kadai Sekar .. Appellant in
CA 1733/02
-Vs-

Inspector of Police
Puthur Police Station
Madurai District
(Cr.No.1035/99) .. Respondent in
both appeals

Both these appeals are preferred under S.374 of The Code of Criminal Procedure against the judgment of the Additional District Judge (Fast Track Court No.2), Madurai made in S.C.No.262 of 2000 dated 27.6.20 02.

!For Appellant in
CA 1239/02 : Mr.M.Subash Babu

For Appellant in
CA 1733/02 : Mr.M.Jeeva

^For Respondent : Mr.V.Jaya Prakash Narayanan
Government Advocate
(Criminal Side)

:COMMON JUDGMENT

This judgment shall govern these two appeals namely C.A.Nos.1239 and 1733 of 2002.
2. The appellants herein, who were arrayed as A-1 and A-2 respectively and who stood charged, tried, found guilty and sentenced to undergo imprisonment for the offences as detailed below, have brought forth these appeals.

Accused Charge(IPC) Guilty(IPC) Sentence

A-1 & A-2 341, 353, 341 - 1 month R.I. each
307 r/w 34, 353 - 2 years R.I. each
394 r/w 397, 394 r/w 397 - 7 years R.I. and
427 Rs.500/- fine, in
default 2 months
S.I. each
307 r/w 34 - 10 years R.I. and
Rs.500/- fine, in
default 2 months
S.I. each
427 2 years R.I. and
Rs.500/- fine, in
default 2 months
S.I. each A-1 307
307 - 10 years R.I. and
Rs.500/- fine, in
default 2 months
S.I.

---

3. The short facts necessary for the disposal of these appeals can be stated thus:

(a) On 18.11.99 at about 1.30 P.M., P.W.2 Gurusamy and P.W.10 Mahalingam, the two Head Constables attached to Puthur Police Station, Madurai came to Puthur Bus Stand on information as to the illegal acts being committed by the accused. When they were proceeding near the market, A-1 and A-2 prevented them at knife point and deterred both of them from performing their official duty. When P.W.2 made an attempt to apprehend the first accused, A-1 attacked him with knife, and in that assault P.W.2 had a bleeding injury below his right eye. When P.W.10 attempted to apprehend A-2, A-1 pushed P.W.2 and with an intention to kill him, strangulated him. At that time, P.W.5 Swaminathan, Grade-I Constable, after finishing his duty, went across the place of occurrence. On seeing the incident, he interfered and came to the rescue of the other Constables. A-2 bite him on his cheek. Both the accused fled away from the scene of occurrence. P.W.1 Ragupathy, Sub Inspector of Police, attached to the said Station, on coming to know about the same through a telephonic message, came to the site of occurrence and sent P.Ws.2 and 5 to the Government Hospital for treatment. Accompanied by his party, P.W.1 went in search of the accused. At that time, both the accused were demanding money illegally from P.W.8 Mani, the owner of Solai Xerox, Karpaga Nagar Complex, and on refusal, they attacked him and caused simple injuries. P.W.8 was sent to the hospital for treatment. At about 4.00 P.M., the accused were standing in front of Annamalai Hotel near the Puthur Bus Stand. When P.W.1 Sub Inspector on seeing the accused went nearby to apprehend them, A-1 holding a knife in hand uttered the words "cd;id bjhiyj; JtpLntd;" and so saying, he wielded his knife. P.W.1 narrowly escaped. The accused took soda bottles from a petty shop situated nearby the said Annamalai Hotel and threw them against P.W.1 and his Constables. In that incident, the walkie-talkie which was in the waist of P.W.1, fell down. The accused who took the same, went away from that place. A-2 caused mischief by damaging the glasses of an auto bearing Registration No.TN 59 N 5900 to the tune of Rs.150/-.

(b) P.W.15 Ganesan, Sub Inspector of Police, attached to the very same Police Station registered a case in Crime No.1035/99. Ex.P16 printed F.I.R. was despatched to the concerned Judicial Magistrate's Court. On receipt of the copy of the F.I.R., P.W.16 Radhakrishnan, Inspector of Police, took up the investigation, proceeded to the site of occurrence, prepared Ex.P11 observation mahazar and Ex.P12 rough sketch and recovered M.Os.1 and 2, the broken pieces of soda bottles and auto mirror respectively under Ex.P9 mahazar. The Investigating Officer examined the witnesses and recorded their statements. Since P.W.1 6 Investigating Officer was on medical leave, P.W.15 Sub Inspector of Police proceeded with the further investigation. On 22.11.99 at about 9.30 A.M., he arrested A-1 and remanded him to judicial custody. On 24.11.99 P.W.11 Ramasubbu, another Sub Inspector of Police, on information arrested A-2 and recorded his voluntary confessional statement. The admissible portion of the said confessional statement recorded is Ex.P8. Pursuant to the said confession, A-2 produced M.O.3 (series) two knives which were recovered by P.W.11 under Ex.P5 mahazar in front of P.W.13 Rajamani and another witness. On 18.11.99 at about 6.55 P.M. P.W.9 Dr.Ramamurthy examined P.W.2 Head Constable medically and issued Ex.P2 wound certificate. On the same day at about 7.00 P.M. the said Doctor examined P.W.5 and issued Ex.P3 wound certificate. P.W.14 Rajagopal, Inspector of Police, examined P.W.9, and on completion of the investigation, a charge sheet was laid against A-1 and A-2.

4. In order to prove its case, the prosecution has examined 16 witnesses and marked 12 exhibits and 3 material objects. After the evidence on the side of the prosecution was over, the appellants/accused were questioned under S.313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, and they denied the same as false. No defence witness was examined. After considering the rival submissions and scrutiny of the available materials, the trial Court found the appellants/accused guilty under the above provisions of the Penal Code and sentenced them to imprisonment as stated supra. Hence, the appellants have preferred these appeals.

5. Arguing for the appellants, the learned Counsel would contend that the prosecution has not proved the guilt of the accused in any way; that though 16 witnesses were examined by the prosecution, the independent witnesses namely P.Ws.3, 4, 8, 12 and 13 all have turned hostile, and thus what was available for the prosecution was only the evidence adduced through the Sub Inspector and Constables; that they are interested witnesses; that the Doctor's evidence has not corroborated the ocular evidence adduced by the prosecution; that even from the Doctor's evidence, it could be seen that the injuries that were caused on P.W.2 were minor; that in order to prove the charge that was levelled against them that they attempted to commit murder of P.W.1 by throwing the soda bottles, which were taken out of the shop of one Annamalai, he has not been examined, and thus, it would cast a doubt whether such occurrence has taken place at all; that there is nothing to attract the ingredients of S.307 of I.P.C.; that so far as the charge that they have made an attempt to commit robbery, and they have about to attack P.W.8 the shop owner, is concerned, the said witness has turned hostile, and hence, the charge has become failed; that there are three occurrences according to the prosecution, at 1.30 P.M., 2.30 P.M. and 4.30 P.M. respectively, but a complaint was given by the injured Constable at about 5.30 P.M., and he was

also given treatment later; that all would cast a doubt on the prosecution case whether such an occurrence would have taken place at all; that from the evidence, what was available, it is clear that when one Constable was doing ganja business, the accused have gone to the Station in order to make a complaint about the same; that enraged over the same, a false case has been foisted against the appellants/accused, and thus, it was a case one foisted and brought forth to wreck vengeance on the appellants; that without proper appreciation of the evidence available, the lower Court found them guilty, and hence, both the appellants are entitled for an acquittal in the hands of the Court.

6. Opposing strongly the above contentions of the appellants' side, the learned Government Advocate (Criminal Side) would submit that in the instant case, it is true that the independent witnesses who were examined at the time of the investigation b e Investigating Officer and the eyewitnesses have also turned hostile, but the prosecution has examined P.Ws.2 and 10 who were wrongfully restrained by the appellants, and they were deterred from performing their official duty; that that part of the evidence of these witnesses is in tact despite the cross examination; that P.W.2 was attacked by A-1 with knife, and A-1 caused injuries to him and pushed him down and attempted to commit the murder of P.W.2 by strangulating him; that this fact is clearly spoken to by P.W.2 the injured and P.Ws.5 and 10 who were the eyewitnesses to the said occurrence; that insofar as the act of the accused attempting at the life of P.W.1, the same was not only spoken to by P.W.1, but also by other Constables were present at that time; that it is true that the shop owner by name Annamalai was not examined, but that cannot be a reason to reject the prosecution case, while the direct evidence in that regard was available in the case; that the mischief by damaging the auto has also been proved by sufficient evidence, and under the circumstances, the conviction and sentence recorded by the trial Court were perfectly correct, and hence, the judgment of the lower Court has got to be sustained.

7. As seen above, the prosecution came with a specific case that P. Ws.2 and 10, the two Head Constables of Puthur Police Station, Madurai on information were proceeding to the site of occurrence, near Puthur Bus Stand, and thus, they were on their official duty. From their evidence, it would be quite evident that they were prevented by A-1 and A-2, and thus, an unlawful restraint was made, and they were deterred in their official duty. At the time of the investigation, which was taken up by the Inspector of Police, after the case was registered, the site of occurrence was inspected by the Investigating Officer. It is pertinent to note that the contents of the observation mahazar and the site plan were not disputed. The Court is of the view that the evidence of the said Constables is cogent, acceptable and trustworthy, and the same inspires the confidence of the Court. Taking into consideration the the said reliable evidence, the lower Court was perfectly correct in holding that both the accused were guilty under Ss 341 and 353 of I.P.C.

8. The further case of the prosecution was that A-1 and A-2 were holding knives in their hands, and when they were to be apprehended, A-1 attacked P.W.2 and caused injuries below his left eye, and not satisfied with the same, A-1 has pushed him down and strangulated him and attempted to kill him. These facts have been spoken to by P.W.2, who was injured and subsequently treated by P.W.9 Medical Officer, who has given a certificate as

to the injuries caused on him, and it has also been spoken to by P.Ws.5 and 10 the two Constables, who were by the side. It is true that simple injuries were found by the Medical Officer as evident from the certificate issued by him. But, the factum of strangulation is spoken to by the witnesses. There is nothing to implicate A-2 in the act committed by A-1 in making a strangulation, because the prosecution was unable to show that there was any common intention or common object with which they behaved. The lower Court on the evidence as spoken to by P.W.2, the injured coupled with the evidence of P.Ws.5 and 10, who were the eyewitnesses and the medical evidence, has rightly found A-1 guilty under S.307 of I.P.C.

9. According to the prosecution case, when there was an intervention by P.W.5, A-2 has bitten him on the right side of his cheek and has caused simple injuries. When P.W.1, the Sub Inspector of Police came to know about the same, went with his party, and he was able to apprehend them. According to the witnesses, the accused took the soda bottles and threw against them, and hence, a charge was framed under S.307 read with 34 of I.P.C. in that regard. But, the shop owner namely Annamalai, from whose shop the alleged soda bottles were taken, was not examined, and both the mahazar witnesses have turned hostile, and hence, that part of the prosecution case has not been proved, since no one fact as to the commission of attempt to murder has been proved. But, from the evidence of P.W.1 and other witnesses, soda bottles were thrown against them. To that extent, it can be termed as criminal intimidation made at that time in order to prevent them from apprehending the accused. Hence, the Court is of the considered view that the ingredients of S.506(ii) of I.P.C. would be attractd under the proved facts.

10. So far as the charge of mischief framed against both the accused under S.427 of I.P.C. is concerned, the Court is of the view that the prosecution has not proved the same. Equally so, the charge levelled against A-1 and A-2 that they attempted to commit robbery by showing a deadly weapon against P.W.8 Mani has failed, since P.W.8 has turned hostile, and those facts have not been proved beyond reasonable doubt, and hence, the appellants/A-1 and A-2 cannot be found guilty under S.394 read with 397 of I.P.C. 11. Therefore, as discussed above, on the face of the evidence available, the judgment of the lower Court finding A-1 and A-2 guilty under Ss 341 and 353 has got to be affirmed. Apart from that, the conviction passed on A-1 by the lower Court under S.307 of I.P.C. has also to be confirmed. In respect of the charge under S.307 read with 34 of I.P.C., the appellants/A-1 and A-2 are to be found guilty under S.506(ii) of I.P.C. The conviction and sentence imposed on A-1 and A-2 by the trial Court in respect of all other charges under S.394 read with 397 and S.427 of I.P.C. and are liable to be set aside, and the appellants/A-1 and A-2 are entitled for an acquittal of that charges. Coming to the question of punishment, the lower Court has imposed 1 month R.I. under S.341 IPC on both the accused, and the Court is of the view that the same has got to be confirmed. So far as the sentence of 2 years R.I. awarded to the appellants under S.353 IPC is concerned, in view of the facts and circumstances, it has got to be reduced to 1 year R.I. As regard 10 years R.I. imposed on A-1 under S.307 of I.P.C., the same has to be reduced to 5 years R.I. In respect of the conviction under S.506(ii) as recorded above, 2 years R.I. each has got to be imposed on the appellants.

12. In the result, both the criminal appeals are partly allowed. The conviction and sentence imposed by the lower Court on the appellants/A-1 and

A-2 under S.397 read with 34 of I.P.C. and S.427 of I.P.C. are set aside, and the appellants/A-1 and A-2 are not guilty of those charges, and they are acquitted of the same. The conviction and sentence imposed by the lower Court on the appellants/A-1 and A-2 under S.307 read with 34 of I.P.C. are set aside, and the appellants/A-1 and A-2 are found guilty under S.506(ii) of I.P.C. and sentenced to undergo R.I. for two years. The sentences imposed on the appellants/A-1 and A-2 by the lower Court under Ss 341 and 353 are modified, and the appellants shall undergo 1 (one) month R.I. under S.341 IPC and 1 (one) year R.I. under S.353 IPC. The sentence of 10 years R.I. under S.307 of I.P.C. imposed on A-1 by the lower Court is modified, and the appellant/A-1 shall undergo R.I. for five years. All the sentences shall run concurrently. In other respects, the judgment of the lower Court is confirmed. The Sessions Judge shall take steps to commit the appellant/A-2 in C.A.No.1733/02 to prison, if he is on bail, to undergo the remaining period of sentence.

Index: Yes
Internet: Yes

To:

1) The Judicial Magistrate No.7, Madurai.
2) The Chief Judicial Magistrate, Madurai.
3) The Additional District and Sessions Judge-cum-Fast Track Court No.II, Madurai.
4) The Principal Sessions Judge, Madurai.
5) The Superintendent, Central Prison, Madurai.
6) The Public Prosecutor, High Court, Madras.
7) The D.I.G. of Police, Chennai 4.
8) The Inspector of Police, Puthur Police Station, Madurai District.

nsv/